

presently pending in Court to enable the Court to exercise its discretion to make an order for the applicant to be joined as a party. The application so made is, therefore, misconceived. In the circumstances, the application is dismissed with costs to the plaintiff and the defendant, to be taxed unless agreed.

a **MOHD NADIR BIN A. SYED
AHAMED & 13 ORS.**

v.

ZUBAIDI B. ABDUL HAMID & 2 ORS.

HIGH COURT, ALOR SETAR

DATO' K.C. VOHRAH J.

[ORIGINATING MOTION NO. 25-03-1992]

7 MARCH 1994

c **LAND LAW: Section 418 National Land Code - Appeal to Court by persons aggrieved by decision of Land Administrator - Time to file appeal - Extension - Whether High Court had power to extend time - National Land Code 1965 ss. 418, 447 - Rules of the High Court 1980, O. 3 r. 5, O. 55 r. 13.**

d **JURISDICTION: High Court - Jurisdiction to enlarge time frame prescribed in statutes - Whether power to extend time expressly provided by statutes - Courts of Judicature Act 1964 s. 25 - Courts Ordinance 1948 s. 47.**

WORDS AND PHRASES: "jurisdiction" - Section 47, Courts Ordinance 1948 - "rules of Court" - Section 447 National Land Code 1965.

e The applicants here were aggrieved with a certain decision of the Land Administrator, District of Langkawi, and subsequently filed an appeal in the High Court against the said decision pursuant to s. 418 National Land Code 1965 (NLC). The facts showed that contrary to the provision of s. 418, which provided the filing of such appeal to be made within three months of the communication of the decision appealed against, the appeal was filed three months and one day after the decision had been communicated to the applicants. The applicants applied for an extension of time by one day so as to validate the appeal and the question that arose was whether the High Court had the power to grant the extension sought for.

Held:

[1] There can be no ambiguity whatsoever that by item 8 of the Schedule referred to in s. 25(2) Courts of Judicature Act 1964, the High Court has the power to apply the laws as to limitation in the manner prescribed by any written law for doing any act or taking any proceeding and this would include the power to extend time, provided that specific provision for allowing it to be done is expressed in such law. However, since **h** s. 418 itself does not confer any power in the **i** High Court to extend the time prescribed in the

provision, it follows that the High Court has no power to extend the appeal period prescribed in that section.

[2] An aggrieved person under s. 418 NLC is given a substantive right to appeal against the decision of certain persons but that right is a limited right in that it has to be exercised within three months of the decision being communicated to him. The rules of Court referred to in section 447 NLC, on the other hand, relate to rules of procedure, not substantive rules of law affecting the rights and disabilities of parties under the NLC. In short, s. 447 is only a saving provision for rules of Court to prevail in matters relating to procedure, and not substantive rights. In the premises the contention that s. 447 herein empowers the Court to enlarge the time limited by s. 418 cannot be sustained.

[3] The person aggrieved under s. 418, if he were to appeal to the Court, has to go to the rules of the Court, which in this case means the Rules of the High Court 1980 (RHC). Under O. 3 r. 5 RHC, the Court only has power to extend or abridge the period within which a person is "required or authorised by these rules or by any judgment, order or direction, to do any act in the proceedings". In other words the provision does not allow the Court to extend time limited by some other law.

[4] The extension of the appeal period in s. 418 NLC is expressly limited by s. 134 when the validity of any forfeiture is challenged. What is implicit in this provision is that s. 418 itself does not allow for extension of time and that what it does envisage is that some other written law may allow for extension of the period of appeal under s. 418 and if there is some such other written law then the said law would not apply to appeals where the validity of forfeiture proceedings are challenged.

[Application dismissed].

Cases referred to:

Lee Cheng v. Seow Peng Kwang [1960] MLJ 1 (fol)
Sin Teck Hong Oils Mills Ltd. [1950] MLJ 232 (refd)

Legislation referred to:

Civil Law Ordinance 1956, s. 8(3)(b)
Courts of Judicature Act 1964, s. 25(1), (2) Second Schedule, item 8
National Land Code, ss. 134, 327(1), 418, 419, 447(1), (2)
Rules of the High Court 1980, O. 3 r. 5, O. 55 r. 13(1), (2)

- a The Courts Ordinance 1948, s. 47 Second Schedule, item 12

Other sources referred to:

Strouds Judicial Dictionary, 3rd Edn., Vol. 2, p. 1544

The Law of Limitation, Rustomji, 5th Edn., Vol. 1 p. 26

- b **The Code of Civil Procedure**, Sir Dinshah Mulla, 10th Edn., p. 433

For the 1st to 7th applicants - Manjit Singh; M/s Manjit Singh & Co.

For the 8th to 14th applicants - Mohamed Tawfeek Badjenid; M/s Tawfeek Badjenid & Partners

- c *For the 1st and 2nd respondents - Hashim bin Jahaya; M/s Ismael Alabas & Hashim*

For the 3rd respondent - Hassan bin Lah, State Legal Adviser

JUDGMENT

- d **K.C. Vohrah J:**

Under s. 418 of the National Land Code (the NLC) "(any) person or body aggrieved by the decision of the State Director, the Registrar or any Land Administrator may, at any time within the period of three months beginning with the date on which it was communicated to him, appeal therefrom to the Court."

- e The applicants in this case were aggrieved with a certain decision of the Land Administrator, District of Langkawi, and they filed an appeal in the High Court, Alor Setar. They were late in filing their appeal by one day. They filed it on 1 March 1992 whereas the appeal should have been filed at the latest on 29 February 1992. Thus this application for extension of time - for the extension of the three months period prescribed in s. 418 by one day so as to validate the appeal.

- f It was maintained by both Counsel for all the applicants that the Court has power to enlarge the time limited by s. 418 as s. 447(1) of the NLC provides that nothing in the NLC shall affect the operation of any rules of Court; and, if any provision of the NLC is inconsistent with any provision of any rules of Court, the latter provision shall prevail and the former provision shall, to the extent of the inconsistency be void. Counsel for the 1st and 2nd respondents maintained and Counsel for the 3rd respondent agreed with him that neither s. 418 or any other provision under the NLC expressly gives power to the High Court to enlarge the time prescribed under s. 418 and therefore the High Court has no power to enlarge the time prescribed.
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Section 25 of and item 8 of the Second Schedule to the Courts of Judicature Act 1964.

It is important to note the extent of the powers the High Court has in respect of enlarging or abridging the time prescribed by any written law and for this we need to turn to the Courts of Judicature Act 1964 (the Act).

Section 25 of the Act sets out the powers of the High Court thus -

25. (1) Without prejudice to the generality of Article 121 of the Constitution the High Court shall in the exercise of its jurisdiction have all the powers which were vested on it immediately prior to Malaysia Day and such other powers as may be vested in it by any written law within its local jurisdiction.

(2) Without prejudice to the generality of subsection (1) the High Court shall have the additional powers set out in the Schedule.

Provided that all such powers shall be exercised in accordance with any written law or rules of Court to the same.

The Schedule referred to by the above subsection (2) has one item, item 8, which relates to the power of the High Court to enlarge or abridge the time prescribed by any written law. Item 8 reads:

Schedule
(Section 25 (2))
Additional Powers of High Court

1. ...

...

8. Power to enlarge or abridge the time prescribed by any written law for doing any act or taking any proceeding, although any application therefore be not made until after the expiration of the time prescribed.

Provided that this provision shall be without prejudice to any written law relating to limitation.

9. ...

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In the context of s. 25(2) of the Act and item 8 of the Schedule to the Act it is pertinent to go back to relevant provisions of the predecessor legislation, the Courts Ordinance 1948 (the Ordinance). Section 47 of the Ordinance provided that the original civil jurisdiction of the High

a Court was as set out in the Second Schedule. Item 12 of Part A of the Second Schedule provided as follows:

Jurisdiction to enlarge or abridge the time prescribed by any written law for doing any act or taking any proceeding, although any application therefor be not made until after the expiration of the time prescribed.

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It will be noted that in item 8 of the Schedule to the Act the word "Power" is used instead of the word "Jurisdiction" appearing in item 12 of the Second Schedule to the Ordinance. The two provisions of the Ordinance together with other impinging provisions were subjected to judicial scrutiny and interpretation in *Lee Cheng v Seow Peng Kwang* [1960] MLJ 1.

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In that case one Lee Lee Cheng, who was the administrator of the estate of Gooi who was killed in a motor car accident together with the driver of the motor car in which he was a passenger, sued the respondent who was the administrator of the estate of the driver for damages under the provisions of the Civil Law Ordinance 1956. The respondent was granted Letters of Administration on 4 November 1956 but they were not extracted until 8 August 1957. Lee, the plaintiff, filed her plaint on 17 February 1956, meaning that the proceedings by her were taken after the expiration of the six months period prescribed by s. 8(3)(b) of the Civil Law Ordinance which reads:

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8(1) ...

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(3) No proceedings shall be maintainable in respect of a cause of action in tort which by virtue of this section has survived against the estate of a deceased person unless proceedings against him in respect of that cause of action ...

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(a) ...

(b) are taken not later than six months after his personal representative took out representation.

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Several applications were brought before the trial Judge, one of which was an application for an order that the time prescribed by the section be enlarged. The trial Judge held that the Court had no power to enlarge the period of time prescribed by the Ordinance and held that the plaintiff's alleged cause of action was barred by it.

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There was an appeal against the decision and the Court of Appeal dismissed the appeal holding that the period of limitation prescribed by s. 8(3)(b) was a period of limitation and that item 12 of Part A of the Second Schedule to the Court Ordinance 1948 “was merely declaratory of the jurisdiction of the High Court to enlarge the time prescribed by any written law for doing any act or taking any proceeding, always providing there was express provision in the particular written law itself which enabled such time to be enlarged”. (per Rigby J at p. 4).

At page 5, Hepworth J, after examining the relevant provisions of law and analysing the observations of Rustomji (**The Law of Limitation**, 5 Edn., Vol. 1, p. 26) and Sir Dinshah Mulla (**The Code of Civil Procedure**, 10 Edn., p. 433) observed:

It is also necessary to consider the meaning of the word “jurisdiction” in s. 47 of the Courts Ordinance 1948, and the Second Schedule thereto. Every paragraph of the Second Schedule, except one, begins with the word “jurisdiction” and the word also appears in the heading to that part of the Courts Ordinance in which s. 47 appears. **Strouds Judicial Dictionary**, 3rd Edn., Vol. 2 at p. 1544, states that the word “jurisdiction” can have two meanings, in one sense meaning “conferring power” and in the other meaning “an area or district”. In my view a combination of these is the meaning of the word as used in the Second Schedule, that is that it means the conferring of power to take cognizance of the laws in force in an area or district. If this is taken as its correct meaning then the Second Schedule can be said to confer power on the Court to apply the laws as to limitation in the manner prescribed including power to extend time **where specific provision for so doing is made.**

(Emphasis added)

It will be noted that in s. 25(2) of the Act and item 8 of the Schedule to the Act the word “jurisdiction” is not used; the word “power” is used and to my mind there can be no ambiguity whatsoever that item 8 of the Schedule to the Act confers power on the High Court to apply the laws as to limitation in the manner prescribed by any written law for doing any act or taking any proceeding and this would include the power to extend time provided that specific provision for allowing it to be done is expressed in such law.

Section 418 itself does not confer any power in the High Court to extend the time prescribed in

a the provision. But both Counsel for the applicants say, however, that s. 447(1) NLC empowers the Court to enlarge the time limited by s. 418. To understand the import of s. 447(1), I think the whole section should be reproduced:

Saving for rules of Court, and procedure in cases not provided for

b 447(1). Nothing in this Act shall affect the operation of any rules of Court; and, if any provision of this Act is inconsistent with any provision of any rules of Court, the latter provision shall prevail and the former provision shall, to the extent of the inconsistency, be void.

c (2) A person or body seeking to take proceedings in the Court under this Act, and any party to proceedings so taken, may apply to the Court by summons in chambers for procedural directions in respect of any matter not provided for; and the Court on any such application may make such order as it considers appropriate.

d The rules of Court referred to this section must necessarily relate to rules of procedure, not substantive rules of law affecting the rights and disabilities of parties under the NLC. An aggrieved person under s. 418 is given a substantive right to appeal against the decision of certain persons but that right is a limited right in that it has to be exercised within 3 months of the decision being communicated to him. Section 418 does not, however, provide the procedure for the appeal to the High Court. Does the person appeal to the High Court by way of case stated, petition or motion? As to what procedure should be adopted for the appeal, s. 447(1) is clear; the person aggrieved has to go to the rules of the Court, meaning, in the context of today’s rules, the Rules of the High Court 1980, to find the procedure and O. 55 r. 13(1) is the answer. It states the procedure; the appeal has to be by way of motion setting out the grounds of appeal, supported by affidavit and, if the Court so directs at the hearing, by oral evidence. Of course this procedure has been used all the time for appeals under s. 418.

h There are other matters in the NLC where a person may take proceedings in Court, eg, ss. 327(1) and 419 and if the procedure for taking the proceedings is not provided for, s. 447(2) allows the person to apply for procedural directions by way of summons in chambers. To digress the provision under s. 447(2) that the application is by way of summons in chambers does seem peculiar bearing in mind that a summons in chambers “can only be used

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in a pending cause or matter” (per Taylor in *Sin Teck Hong Oils Mills Ltd.* [1950] MLJ 232). And the question may well be asked whether the said procedure should be disregarded since it is inconsistent with the procedure provided by the rules of Court. I leave it to another forum to decide the matter.

Now, s. 447 is a saving provision for rules of Court to prevail in matters relating to procedure, not substantive rights, and the procedure for appeals to be made to the High Court, is as mentioned earlier by way of motion under O. 55 r. 13(1). If s. 418 had not limited the time to appeal to three months then O. 55 r. 13(2) would have been applied in this case. O. 55 r. 13(2) reads:

13.(1) ...

(2) **Unless otherwise provided** by any written law, such appeal shall be made within one month from the date of which the decision was given or the date on which such decision was notified to the person appealing, whichever is the later date.

(3) ... (emphasis added)

And if O. 55 r. 13(2) had applied in this case, the application could be made for extension of the time limited in r. 13(2) which is a rule of the High Court Rules 1980; and the Court by virtue of O. 3 r. 5 would have the power to extend the time prescribed in O. 55 r. 13(2). Under O. 3 r. 5 the Court has only power to extend or abridge the period within which a person is “required or authorised by these rules or by any judgment, order or direction, to do any act in the proceedings”. In other words the provision does not allow the Court to extend time limited by some other law.

Finally, I wish to note that I am mindful that the extension of the appeal period prescribed in s. 418 is expressly limited by s. 134 of the NLC where the validity of any forfeiture is challenged. It provides that the validity of any forfeiture under the NLC shall not be challenged in any court except by way of appeal under s. 418 and that “notwithstanding anything in any other written law, no such appeal shall be commenced after the expiry of the period of three months allowed for the bringing thereof by the said s. 418”. It may be argued that this provision implies that the time prescribed in s. 418 may be extended for proceedings Not caught by s. 134. I think however, that what is

a implicit in this provision is that s. 418 itself does not allow for extension of time and that what it does envisage is that some other written law may allow for extension of the period of appeal under s. 418; and if there is some such other written law then the said law would not apply to appeals where the validity of forfeiture proceedings are challenged.

b From the foregoing I am bound to conclude that the High Court has no power to extend the appeal period prescribed in s. 418 NLC. The application for extension of time is dismissed with costs.

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